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County of Los Angeles CHIEF ADMINISTRATIVE OFFICE

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Chief Administrative Officer

January 21, 2005


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To: Supervisor Gloria Molina, Chair
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From: 
David E. Janssen
Chief Administrative Officer

REVIEW OF THE MEMORANDUM OF UNDERSTANDING BETWEEN THE SHERIFF AND THE BUREAU OF IMMIGRATION AND CUSTOMS ENFORCEMENT (ITEM NO. 21 AGENDA ON JANUARY 25, 2005)

On January 25, 2005, your Board will be asked to approve a Memorandum of Understanding (MOU) between the Sheriff's Department (Sheriff) and the United States Department of Homeland Security Bureau of Immigration and Customs Enforcement (ICE). The MOU will allow Sheriff's Custody Assistants to be trained by ICE to access the Deportable Alien Control System (DACS) federal database and to perform standard interviews of self-declared foreign born inmates to determine whether an inmate is a convicted criminal alien or a previously deported criminal alien to be remanded to federal custody at the completion of their County sentence.

ICE currently has two agents assigned to interview a small percentage of the foreign born inmates in County jails and an additional five agents to process inmates. The proposed MOU will provide six additional trained personnel to perform the interview process and to identify a higher percentage of criminal aliens in custody. Although the length of time to conduct an interview and process the appropriate paperwork will take approximately 20 to 35 minutes, on rare occasions, more complex interviews may take up to 45 minutes. The Department has assured the CAO that the interviews will be conducted during off-peak hours, when necessary, to avoid a conflict and will not create a backlog in the processing of inmates. A flow chart and narrative summary of the existing and proposed booking and ICE interview process is attached.

Moreover, as previously reported by the Sheriff's Department, of the estimated 17,500 inmates currently in custody, 20 to 25 percent are foreign born (4,375). Additionally, of the 600 inmates released from County custody each day, approximately 125 are self-declared foreign born inmates who get released without being interviewed, including those released directly from court. The proposed MOU will allow a higher number of these inmates either who are currently not being interviewed because of a lack of resources, or who are being released directly from court, to be interviewed and detained for ICE action rather than be released directly back into the community.

We also considered the potential for increased liability as a result of the Sheriff performing these interviews. According to County Counsel, if an inmate is identified as a criminal alien who was previously ordered deported, the inmate's identity will be verified by LiveScan prior to deportation. Self-declared foreign born inmates who were not previously ordered deported will continue to receive regular due process procedures and deportation hearings before they can be subject to deportation by ICE. Accordingly, these procedures may reduce the likelihood that an inmate will be improperly deported or detained, and reduce the potential liability to the County.

In addition, if an inmate files a claim for damages based on a state law-recognized tort, for example false imprisonment, under the terms of the MOU, if the Attorney General certifies that the employee was acting within the scope of his/her employment at the time of the incident, the United States will substitute in as the sole defendant, pursuant to the Federal Tort Claims Act. Because the employee no longer would be a defendant, the County would not be liable for damages awarded. If however, the Attorney General fails to certify that the employee was acting within the scope, the employee and presumably the County can petition the court to make the certification.

In September 2002 and September 2003, ICE entered into MOU arrangements with Florida and Alabama, respectively, in which state troopers are allowed to make inquiries as part of incidental law enforcement and/or task force activities. To date, there has been one known lawsuit, related to the MOU, filed in Alabama. In that case, after a foreign born individual was detained for deportation proceedings, the ensuing "hold" resulted in the delay in the processing of the individual's driver's license application. The result of that case is unknown at this time. The proposed arrangement with the Sheriff's Department is restricted to interviews within the jails and will not extend authority for deputies to venture into the community to conduct interviews during incidental law enforcement activities.

Each Supervisor
January 21, 2005
Page 3

On average, approximately 50 inmates are released into ICE custody on a daily basis. According to ICE, they are federally mandated to house all convicted criminal aliens and previously deported criminal aliens for appropriate deportation proceedings. With respect to the ability of ICE to process and house the increased workload that may result from the proposed MOU, ICE indicated that they support the MOU, would receive the additional inmates, and process them accordingly.

According to the Sheriff's Department, approval of the proposed MOU will provide the following benefits: 1) reduce the release of criminal aliens and previously deported criminal aliens back into the community; 2) improve the integrity of foreign born/undocumented criminal alien data; and 3) delay the return of career criminal aliens back into the County jail system.

Please let me know if you have any questions or your staff may contact Brian Mahan, at (213) 893-2297.

DEJ:SRH:DL
RG:BAM:yf

Attachment(s)

c: Sheriff Leroy D. Baca
Executive Officer, Board of Supervisors
County Counsel

sheriff.and.bic.bm

Proposed MOU Between The Board of Supervisors/Sheriff and The Bureau of Immigration and Customs Enforcement (ICE)

Purpose: To train LASD personnel (custody assistants) to access the federal Deportable Alien Control System (DACS) and conduct ICE interviews during the inmate classification process for the identification and placement of "Holds" on criminal alien and previously deported criminal alien inmates. Once an inmate's County time is served, they will be turned over to the custody of ICE.

Current Process:

I. Booking

- A. Immediately upon arrest and prior to transport to Court or the Inmate Reception Center (if not released), arrestees are finger-printed (Livescan), photographed, and entered into the Automated Justice Information System (AJIS).
- B. Finger-print and booking information, for inmates who self-declare they are "foreign born", are automatically transmitted to the Department of Justice Law Enforcement Assistance Center database in Vermont to find a match.
- C. The DOJ sends a teletype/fax response to the requesting (booking) agency, the Sheriff's Department, and the FBI that the arrestee is here legally (legal alien with alien registration number, etc.), a known criminal alien, an undocumented alien, or a previously deported criminal alien.
- D. The DOJ report also informs the County that a "hold" should be placed on an inmate for detention and transfer to ICE custody after completion of their County time. Holds are currently issued only if it is determined that the inmate is a known previously deported criminal alien.

II. ICE Interviews at Inmate Reception Center

- A. Inmates are scheduled for interview with ICE agents based on information reported through the federal database.
- B. ICE interviews are conducted at the conclusion of County time and prior to release from County custody.
- C. ICE agents are unable to interview all self-declared foreign born or DOJ holds prior to release.
- D. Self-declared foreign born arrestees that are released from Court and are not processed into the County's jail system are not interviewed by ICE.

Proposed Interview Process:

- I. Booking Process (Same as above).
- II. LASD will conduct ICE interviews concurrent with and/or following the classification interview process.
 - A. If foreign born, the inmate will be placed on the foreign born list.
 - B. If here legally, but foreign born, inmate must identify an "A" number (alien registration number) which LASD uses to determine legal status.
 - C. If here illegally, or is identified as a criminal alien or previously deported criminal alien, LASD will be allowed to place a "hold" on the inmate. Upon completion of their County time, the inmate will be turned over to the custody of ICE.
 - D. If the inmate is convicted on local charges and sentenced to County jail, that sentence must be served in County jail prior to being turned over to the custody of ICE. ICE will make the determination whether a deportation hearing or other immigration related action is warranted.
- III. Staffing
 - A. Custody Assistant (CA) candidates for ICE interview training will be considered on a volunteer basis and will be subject to a federal background check. LASD reports that the County cannot require existing employees to take a second background for the new assignment because a negative report could result in termination.
 - B. Although LASD intends to perform the ICE interviews concurrent with and/or following the classification interview process which are conducted 24 hours per day, seven days per week, ICE interviews will be conducted only 20 hours per day (6:00A.M. – 2:00A.M.), Monday through Friday.
 - C. LASD proposes to reassign six (6) CA positions from various units within the IRC: two (2) CA's will be assigned to the day shift (6:00A.M. to 4:00P.M.), three CA's will be assigned to work the night-shift (4:00P.M. to 2:00A.M.), and one CA will be assigned to work as a relief shift. Each position will have staggered starting times and off days to ensure each shift is covered.
 - D. Two (2) of the CA's currently schedule and deliver ICE interview slips to inmates. Performing ICE interviews will be in addition to their existing duties. The remaining four (4) CA's will be re-deployed from other areas within the IRC.
 - E. According to LASD, any workload from a reassignment will be absorbed by the remaining staff. However, overtime may be required whenever an unusual workload demand occurs. Assuming two (2) CA's may be required to work 20 hours of overtime each week, it could cost LASD up to \$69,000 annually to perform ICE interviews (2080 hrs x \$32.98 (OT rate) x = \$68,598).

IV. Benefits

- A. Early identification of criminal aliens and previously deported criminal aliens would:
 - i. Prevent the release of criminal aliens and previously deported criminal aliens back into the community.
 - ii. Improve the integrity of foreign born/undocumented criminal alien data.
 - iii. Increase and maintain the number of eligible inmate days subject to SCAAP funding.
 - iv. Delay the return of career criminal aliens back into the County jail system.

